

A. W. Schlesinger Geriatric Center, Inc. and Service Employees International Union Local 706, AFL-CIO, Petitioner. Case 23-RC-4974

February 25, 1982

DECISION ON REVIEW AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

On April 29, 1981, the Regional Director for Region 23 issued a Decision and Direction of Election in which he included the Employer's technical employees in the Petitioner's requested unit of service and maintenance employees. Thereafter, the Petitioner filed a request for review, which the Employer opposed, contending that the requested unit limited to service and maintenance employees is appropriate.

On May 27, 1981, the Board granted the Petitioner's request for review and, thereafter, the Employer and the Petitioner filed briefs on review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review, and makes the following findings:

The Employer operates a 396-bed nursing home and employs approximately 300 employees. Of that number, there are approximately 39 licensed vocational nurses, 1 EKG/inhalation/X-ray technician, 1 occupational therapist, and 2 occupational therapy aides, all of whom the parties have stipulated to be technical employees.

The Employer has approximately seven nursing stations which are under the supervision of a registered nurse. On each of the Employer's three shifts, most of these stations are staffed by at least one LVN, the most senior of whom acts as charge nurse. As charge nurse, the LVN coordinates the work of the nursing team, which includes medication aides (MAs) and technical nurses aides (TNAs), who are service and maintenance employees. The LVNs lead the activities of their particular nursing unit with respect to nursing services and the maintenance of patients' records. The MAs prepare medications and administer certain dosages. The TNAs are responsible for the physical comfort of the patient and take and record vital signs, pulse, blood pressure, etc. However, the LVNs are higher paid, better educated, and skilled; also, as a function of their license, they perform certain duties which MAs and TNAs cannot: order medicines and administer the first dosage, administer needle injections and intravenous or intramuscular

medicine, administer fractional dosages of medicine. Further, when serving as charge nurses, LVNs are involved in the first step of the Employer's disciplinary procedure by preparing counseling reports regarding rules violations.

The record reveals that the EKG/inhalation/X-ray technician has a state certification to perform X-rays, and uses independent judgment when performing that task. Further, the Employer requires that this technician have a high school education and prior experience. The occupational therapy aides are required to have a high school education and 2 years of higher academic training in a related field. Both work under the direction of the occupational therapist, who is licensed.

In including the technicals in the requested service and maintenance unit, the Regional Director found that they possess a substantial community of interest with the service and maintenance employees. Thus, he noted that the LVNs, TNAs, and MAs share supervision and work stations, interact, and perform similar duties in providing routine patient care. He also found that the remainder of the service and maintenance employees *support* the activities of the nursing stations. Finally, the Regional Director noted that the technicals are hourly paid, receive the same benefits, and share break and lunch areas with service and maintenance employees.

The Petitioner contends that the technical employees, by virtue of their skills, training, and job functions, possess a distinct community of interest so that the requested service and maintenance unit is appropriate absent their inclusion. We agree.

In *Nathan and Miriam Barnert Memorial Hospital Association d/b/a Barnert Memorial Hospital Center*¹ and *Newington Children's Hospital*,² the Board addressed the question of the unit placement of technical employees in the health care industry. In *Barnert*, the Board recognized, as it had in the industrial setting,³ the distinct interests possessed by technical employees. Specifically, the Board found appropriate a separate unit of technical employees, noting that their training, skills, education, and job requirements established a community of interest not shared by service and maintenance employees. In *Newington*, the Board relied on these distinct interests to exclude technicals from a requested service and maintenance unit. The Board also noted that a service and maintenance unit in the health care industry is analogous to a production and maintenance unit in the industrial setting and, as such, constitutes a classic appropriate unit.

¹ 217 NLRB 775 (1975).

² 217 NLRB 793 (1975).

³ See, generally, *The Sheffield Corporation*, 134 NLRB 1101 (1961).

The sole issue in this case is whether the Petitioner's requested unit is appropriate absent the inclusion of the technical employees. In concluding that it was not, the Regional Director relied on the facts that the technical employees share benefits, certain working conditions, and facilities with service and maintenance employees, as well as interact with those employees in providing routine patient care. Nevertheless, this interaction and these shared benefits do not, in this case, outweigh the diversity of interests which result from the technicals' training, skill, and job functions.

While the LVNs, MAs, and TNAs work closely together and share supervision, the LVNs are higher paid and more skilled. And, although the LVNs perform certain tasks also performed by the MAs and TNAs, no such interchange exists with regard to the other service and maintenance classifications, which constitute a significant portion of the requested unit. Further, LVNs are authorized to perform certain tasks which TNAs and MAs cannot, such as administering needle injections and ordering medicine. Such tasks are a function of the LVNs' state licensing which reflects the higher training, higher education, and competency of the LVNs in providing necessary and important nursing care. As the Board noted in *Barnert*, a separate community of interest is frequently evidenced by licensing, certification, or registration. In addition, LVNs, for the most part, serve as charge nurses and, as such, direct the TNAs and MAs in their jobs and report rules infractions on counseling reports.⁴ These duties only add to the diversity of in-

terests between the LVNs and service and maintenance employees. Finally, LVNs undergo separate in-house training.

It may well be that a unit combining the Employer's technical and service and maintenance employees, had it been sought by the Petitioner,⁵ would be appropriate. However, as the Board stated in *Newington Children's Hospital*, 217 NLRB at 794, "nothing in the policy of the Act can be said to place upon a union the obligation of seeking the largest appropriate unit, or even the most appropriate unit; it is enough that the unit sought is an appropriate unit." The training, skill, and job functions of the LVNs, as technicals, create a community of interest not shared by service and maintenance employees. We shall therefore exclude the LVNs, as well as the other technicals,⁶ from the requested service and maintenance unit.

ORDER

It is hereby ordered that this proceeding be, and it hereby is, remanded to the Regional Director for action consistent herewith.

⁵ *National G. South, Inc.*, a wholly owned subsidiary of *National Living Centers, Inc.*, a wholly owned subsidiary of *ARA Services, d/b/a Memorial Medical*, 230 NLRB 976 (1977), relied on by the Regional Director is inapposite. There, the Board found appropriate the unit requested by the petitioner, combining technicals and service and maintenance employees.

⁶ Apart from the parties' stipulation that the occupational therapist, the two occupational therapy aides, and the EKG/inhalation/X-ray technician are technical employees, almost no evidence was introduced as to their duties, contact, or interchange with service and maintenance employees. In light of the stipulation that these employees are technicals, their distinct functions, and the evidence of their training and education, we find that their interests are more closely aligned with the LVNs and we shall exclude them.

⁴ In light of our decision, there is no need to pass on the Petitioner's contention, which the Regional Director rejected, that the LVNs' duties as charge nurses render them statutory supervisors.